

of limestone existed resting on steep slopes above the portals. Weighing that formidable testimony against that of the mine superintendent who essentially testified that because the rocks were difficult to pull down, in his opinion they would not have fallen down, I must make the credibility finding in favor of the Secretary, and thus find a violation of the cited standard.

Under the circumstances herein, I find that it was reasonably likely that the aforementioned loose rock could fall down at any time, and if one of these large rocks that the Secretary maintains was loose fell, it would be reasonably likely that it could fall on one of the vehicles, including customer's trucks, that go into and out of the mine and crush it. I therefore find that the violation was serious and "significant and substantial". Secretary v. Mathies Coal Company, 6 PMSHRC 1 (1984). Furthermore, it is undisputed that mine management knew of the condition prior to the citation being issued. They just didn't believe that it was a condition that needed correction. I disagree and find that their negligence was "high" as cited by the inspector.

Citation No. 2247378 was also issued on March 5, 1985, by Inspector Ruffner and alleges a "significant and substantial" violation of the standard at 30 C.F.R. § 57.9003 and charges as follows:

Wo. 2 Euclid haul truck did not have any brakes.

According to Inspector Ruffner, he overheard a conversation between the men working at the Clover Bottom Mine that there were no brakes on at least one of the trucks being used in the mine and that there was a danger of colliding with one of the customer's trucks while they were going in and out hauling from the stockpile. He asked the safety director to let him test the brakes on the No. 1 and 2 trucks, which he did. When he tested the No. 2 truck, by having the driver accelerate the truck over a predetermined distance and then apply the brakes, he found it to have no brakes, caused in his opinion by running through water under the stockpile bins which was deep enough to reach the brake drums.

The record establishes that this truck was being operated in a fairly congested area with brakes that were rendered useless for all practical purposes. Therefore, I find that the violation was a "significant and substantial" one. Mathies, supra. Furthermore, the lack of adequate brakes is the type of violation that should have